as users of the highway in the ordinary manner. *Richards* v. *Inhabitants of Enfield*, 13 Gray (Mass.) 344.

NUISANCE — WHAT CONSTITUTES A NUISANCE — OBSTRUCTION OF QUASI-PUBLIC DOCK. — A dock owned by a corporation, but by statute open to all persons on payment of the dock rates, was negligently damaged by the defendant so that it had to be closed for repairs. The plaintiff sought to recover for delay resulting from his being unable to dock his ship and to load his cargo. *Held*, that the plaintiff cannot recover. *Anglo-Algerian S. S. Co.* v. *Houlder Line*, [1908] 1 K. B. 659.

It is settled that an individual can recover for the direct, particular damages he suffers from unlawful obstruction of a highway. *Rose* v. *Miles*, 4 M. & S. 101. Though there is some conflict as to how direct the damages must be to give ground for an action, if obstructing the dock were considered equivalent to obstructing a highway, the damage was probably sufficiently direct to warrant a recovery in the present case. *Brick Mfg. Co.* v. *D. L. & W. R.*, 51 N. J. L. 56; *cf. Willard* v. *Cambridge*, 3 Allen (Mass.) 574; see 19 HARV. L. REV. 540. The plaintiff's statutory right to use the dock on payment of the dock rates might seem as worthy of protection as his right to use a highway. The court seems warranted, however, in not applying the principles applicable to cases of public nuisance, since the courts tend to restrict the limits of liability in such cases. *Willard* v. *Cambridge*, *supra*. Moreover the position of the dock company closely resembles that of a common carrier, and it has been held that a brakeman injured by a bridge so negligently built that it obstructed a railroad's right of way cannot recover from the construction company. *Stoneback* v. *Thomas Iron Co.*, 4 Atl. 721 (Pa.).

PATENTS — INFRINGEMENT — EXPIRATION OF PATENT AS AFFECTING REMEDY IN EQUITY. — A bill was filed thirteen days before the expiration of a patent to restrain its infringement and secure an accounting. The defendant had two months in which to enter an appearance. *Held*, that the bill is dismissed, since an injunction is not the real object of the suit. *Diamond Stone-Sawing Machine Co. of N. Y.* v. *Seus*, 38 N. Y. L. J. 2469 (Circ. Ct., S. D. N. Y., Mar. 1908).

A prayer for an injunction is ordinarily essential in order that equity may entertain a bill for the infringement of a patent. *Root* v. *Railway Co.*, 105 U. S. 189. And an injunction is not granted after the patentee's license has expired. *Campbell* v. *Ward*, 12 Fed. 150; but *cf. N. Y., etc., Co.* v. *Magowan*, 27 Fed. 111. But a bill will not be dismissed because the patent expired between the beginning and the termination of the suit, for equity retains jurisdiction to complete the patentee's remedy in one proceeding. *Beedle* v. *Bennett*, 122 U. S. 71. The prayer for an injunction cannot, however, be used as a pretext to secure such an equitable settlement when the legal remedy is adequate. *McDonald* v. *Miller*, 84 Fed. 344. Nor will equity assume jurisdiction when the patent runs out so soon that an injunction, although honestly desired, cannot be granted before the patent expires. *Bragg Mfg. Co.* v. *Hartford*, 56 Fed. 292. If the patentee delays until the expiration of his right is at hand, his good faith becomes questionable, and, although an injunction can be had before the patent expires, assumption of jurisdiction is in the discretion of the court.

POLICE POWER. — REGULATION OF BUSINESS AND OCCUPATIONS — TEN-HOUR LAW FOR WOMEN IN FACTORIES. — An Oregon statute provided that no female should be employed in any mechanical establishment, or factory, or laundry more than ten hours during any one day. *Held*, that the statute is constitutional. *Muller* v. *Oregon*, 208 U. S. 412.

For a discussion of the principles involved, see 20 HARV. L. REV. 653. See also *supra*, p. 495 *et seq.*

QUASI-CONTRACTS — RIGHT AND OBLIGATIONS OF PARTIES IN DEFAULT UNDER CONTRACT — RECOVERY BY PLAINTIFF IN DEFAULT FOR SERVICES RENDERED. — The plaintiff abandoned a contract of service which was unen-

forceable under the statute of frauds, and sued on a *quantum meruit* for the value of services rendered. *Held*, that the plaintiff cannot recover. *Collins* v. *Smith*, 44 Can. L. J. 163 (Ont., Div. Ct., Feb. 3, 1908).

It is generally held that one who abandons a contract cannot recover for a part performance of it. *Hapgood* v. *Shaw*, 105 Mass. 276. But, by the weight of authority, a plaintiff in default may recover for services rendered under an oral contract unenforceable by reason of the statute of frauds. *Bentley* v. *Smith*, 59 S. E. 720 (Ga.); *contra*, *Swanzee* v. *Moore*, 22 Ill. 63. The reason usually given is that the defendant should not be allowed to set up the void contract as a defense. *King* v. *Welcome*, 5 Gray (Mass.) 41. This position, however, seems inconsistent with the plaintiff's privilege of setting up the contract to raise an implied promise for his *quantum meruit*, and with the effect given to the contract in fixing his damages. If recovery is allowed, it would seem better to put it on the ground that the defendant would be unjustly enriched by being allowed to retain the benefit of the plaintiff's services without paying for them. Accordingly any damages caused by the plaintiff's failure to fully perform should be deducted from the amount allowed for his services. *Fuller* v. *Rice*, 52 Mich. 435.

RECEIVERS — LIABILITY FOR RECEIVERSHIP EXPENSES. — The plaintiff brought suit for the foreclosure and sale of the property of a quasi-public corporation. Upon the plaintiff's application a receiver was appointed pending final judgment in the suit. After a decree establishing the plaintiff's rights it was found that the assets of the corporation were insufficient to pay the expenses of the receivership. *Held*, that the plaintiff is not personally liable for the deficiency. *Atlantic Trust Co.* v. *Chapman*, 208 U. S. 360. See NOTES, p. 529.

SOVEREIGNS — ACTION BY TRUSTEE PROCESS AGAINST RAILWAY OWNED BY FOREIGN SOVEREIGN. — The plaintiff brought suit for a tort by trustee process in Massachusetts against an unincorporated railway in Canada owned by the Crown. *Held*, that the court has no jurisdiction. *Mason* v. *Intercolonial Ry. of Canada*, 83 N. E. 876 (Mass.).

The court considered the case as if it were a suit against a foreign sovereign. A similar case was discussed in 17 HARV. L. REV. 270, 348.

STATUTES — INTERPRETATION — EFFECT OF SPECIAL SAVING CLAUSE ON GENERAL SAVING STATUTE. — The defendant was convicted of paying rebates in violation of the first section of the Elkins Act which had been superseded by the Hepburn Act. The offenses were committed prior to the enactment of the latter. The Hepburn Act expressly repeals all statutes or parts of statutes in conflict with its provisions. It contains an express saving clause mentioning only pending causes, and providing that such causes "shall be prosecuted to conclusion in the manner heretofore provided by law." § 13 of the United States Revised Statutes provides that "the repeal of any statute shall not have the effect to release any penalty incurred under such statute unless the repealing act shall so expressly provide." *Held*, that the conviction is valid. *Great Northern Ry. Co.* v. *United States*, 208 U. S. 452.

For a discussion of a previous decision reaching the same result, see 20 HARV. L. REV. 502.

SURETYSHIP — SURETY'S RIGHT OF SUBROGATION — SUBROGATION TO RIGHTS OF PRINCIPAL. — The B Company became surety on the statutory bond given by A, a contractor on government work, for the performance of the contract and the payment of laborers and materialmen. A completed the work, but B had to pay to laborers more than the amount due to the contractor and retained by the government under the contract. *Held*, that B is entitled to the fund retained by the government. *Henningsen* v. *U. S. Fidelity and Guaranty Co.*, 208 U. S. 404.

It is fundamental in the law of suretyship that a surety discharging the obligation of his principal is subrogated to the rights of the creditor against the principal. And the surety has also the right, equally well recognized but not